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July 24, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Grandfathered Short-Spaced FM Stations  
(MM Docket No. 96-120, RM-7651)

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Compass Radio of San Diego, Inc., licensee of Radio Station KXST(FM), Oceanside, California, are an original and nine (9) copies of its Opposition To Motion For Extension Of Time In Reply Comment Deadline in the above-referenced rulemaking proceeding.

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS &  
HANDLER, LLP

By:

Irving Gastfreund

Enclosures

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BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of )

Grandfathered Short-Spaced FM )  
Stations )

MM Docket No. 96-120  
RM-7651

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JUL 24 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: The Commission

**OPPOSITION TO MOTION FOR EXTENSION OF TIME  
IN REPLY COMMENT DEADLINE**

COMPASS RADIO OF SAN DIEGO, Inc. ("Compass"), by its attorneys, pursuant to Section 1.415 of the Commission's Rules, hereby submits its instant Opposition with respect to the Motion For Extension of Time in Reply Comment Deadline, filed in this proceeding on July 22, 1996 by the National Association of Broadcasters ("NAB"). In support whereof, it is shown as follows:

**I. Introduction**

In its Notice of Proposed Rule Making in the above-captioned proceeding, FCC 96-236, released June 14, 1996 (hereinafter "NPRM"), the Commission solicited comment on several proposals designed to eliminate unnecessary regulations and to streamline the current method of modifying the technical facilities of pre-1964 "grandfathered" short-spaced FM stations -- i.e., those FM broadcast stations at transmitter sites authorized prior to November 16, 1964 that did not meet the minimum separation distances required by later-adopted Section 73.207 of the Commission's Rules and which have remained short-spaced since that time. the Commission proposed to eliminate restrictions in Section 73.213 of the Rules which unnecessarily impede flexibility for such grandfathered short-spaced stations to select appropriate transmitter site or to improve technical facilities. The NPRM established July 22, 1996 as the deadline for the filing

of Comments by interested parties and established August 5, 1996 as the deadline for the filing of any Reply Comments.

On July 22, 1996, NAB filed its Comments in this proceeding, in which it asserted as follows:

“... NAB believes there may be ways that some grandfathered FM stations could be allowed to modify facilities in a fashion that would not result in significant new interference nor would be at odds with related FCC policies applicable to such changes. On these issues, however, NAB believes that it should reserve final judgment until all technical factors have been discerned and evaluated.”

NAB further noted in its Comments that it is commissioning an independent technical study designed to determine whether changes in the Commission’s Rules could meet the goals of affording new latitude as to technical facilities with certain grandfathered short-spaced FM stations, and of creating no increased interference to short-spaced co-channel, first, second or third adjacent channel stations.

In light of these considerations, on July 22, 1996, NAB filed with the Commission in this proceeding its Motion For Extension of Time In Reply Comment Deadline, in which NAB requested that the Commission grant a 60-day extension of time for the filing of Reply Comments in this proceeding. NAB notes, as a basis for its request for a two-month extension of time, that this amount of time is needed for it to complete its study of the issues in this proceeding, including its contemplated “independent technical study”.

Compass respectfully opposes the NAB request for a two-month extension of time within which Reply Comments may be filed in this proceeding. As shown below, NAB has not established good cause for such a lengthy delay in this proceeding. Moreover, even if it were to be assumed, arguendo, that there were some compelling need for the additional data which NAB hopes to supply, it would be highly prejudicial and a denial of fundamental procedural fairness for NAB to be given the opportunity of submitting such new data on the deadline for the filing of Reply Comments, thereby effectively precluding all other parties from having the opportunity to comment on or, if need be, rebut any showings or data contained in the contemplated NAB submission. For these reasons, NAB's Motion For An Extension Of Time should be expeditiously denied.

## **II. Argument**

### **A. NAB Has Not Established Good Cause For The Grant Of Its Extension Of Time Request**

Under Section 1.46 of the Commission's Rules, which governs motion for extension of time, it is expressly recognized that it is the policy of the Commission that extension requests will not be routinely granted. Clearly, good cause must be established for grant of an extension of time request -- particularly one, such as that of NAB, which would extend a reply comment deadline for two months, when the original time frame for the filing of Reply Comments in the above-captioned proceeding was only two weeks following the deadline for submission of Comments. Here, NAB has not made a showing of good cause sufficient to warrant the grant of its Motion For Extension of Time.

Specifically, while NAB asserts that it has commissioned an independent technical study, there is precious little information provided either in NAB's Comments or in its Motion For Extension of Time concerning precisely what it is that will be studied. The only specifics that are provided by NAB are statements that suggest that its independent technical study may focus on recent improvements and reassignments of radio receiver design, particularly in relation to better rejection of second and third adjacent channel interference. See NAB Comments at 2-3; NAB Motion For Extension Of Time at 2. It is most difficult to ascertain precisely what will be studied by NAB's independent consultants, in this regard, or what the testing methodology will consist of. Absent such data, there is no sufficient basis established to warrant grant of a two-month extension of time for the filing of Reply comments in this proceeding.

It should be noted, in this regard, that this proceeding traces its origins with the filing of a Joint Petition For Rulemaking (RM-7651) filed with the Commission on February 1, 1991 by three consulting engineering firms. As is noted by the Commission in Paragraph 5 of its NPRM herein, the NAB proposed the Joint Petition. Thus, RM-7651 has now been pending before the Commission for 5-1/2 years. Presumably, in recognition of the need to bring the issues in this proceeding to an expeditious resolution, the Commission, in its NPRM in this proceeding, established a rather protracted pleading cycle: five weeks following the release of the NPRM (two months following the adoption of the NPRM), for the submission of Comments, and a period of two weeks following the filing of Comments for the submission of Reply Comments. Grant of the NAB extension request would inject yet further significant delay in the resolution of this already protracted matter. Such delay would prejudice licensees, such as Compass, which desperately need a return to regulatory

flexibility by the Commission in relation to Section 73.213(a) of the Commission's Rules with respect to transmitter site relocations involving grandfathered short-spaced second adjacent channel and third adjacent channel stations. As noted in Compass' Comments in this proceeding, Compass is the licensee of Radio Station KXST(FM), Oceanside, California, which presently has pending before the Commission an application (File No. BPH-910612ID) for a minor modification of the technical facilities of KXST(FM), so as to relocate the station's transmitter site. That application, which was filed with the Commission over five years ago, remains blocked unless and until the Commission amends Section 73.213(a) with respect to second and third adjacent channel grandfathered short-spaced FM stations, proposed either in Paragraph 25 or in Paragraph 26 of the Commission's NPRM in this proceeding.

It should be noted, in connection with the foregoing, that there is no public interest need established by NAB for any additional technical study with respect to grandfathered short-spaced second adjacent channel and third adjacent channel FM stations. Compass' Comments in this proceeding contain a significant amount of empirical data demonstrating clearly that adoption by the Commission of its proposals to liberalize Section 73.213 of the Commission's Rules for grandfathered short spaced second and third adjacent channel stations will not result in any increased interference to such stations. See Compass' Comments at 27-37. Indeed, Compass therein demonstrated that the closer the two grandfathered short-spaced second adjacent channel or third adjacent channel FM stations move their respective transmitter sites toward one another, the less the stations experience any interference from one another. Indeed, Compass demonstrated in its Comments that a number of radio stations actually exist on second and third adjacent channels from

one another with transmitter sites located as little as 3.8 km apart. Compass' Comments t 34-35 and at Exhibit 2. Indeed, the Commission itself noted in its NPRM as follows:

“A limited number of grandfathered stations existed between 1964 and 1987 with complete flexibility on second adjacent channel and third adjacent channel short-spacings, and we did not receive complaints of second-adjacent-channel or third-adjacent-channel interference during that time. Thus, historically, the absence of restrictions did not result in interference complaints, and we are therefore inclined to reinstate the pre-1987 provisions. [Emphasis added.]”

NPRM at ¶24, slip op at 10.

In sum, all available evidence demonstrates clearly that another interference is caused by short-spaced second and third adjacent channel stations to other such stations. The empirical data to support this conclusion is fully set forth in Compass' Comments. Hence, there is clearly no compelling need for the type of data which NAB proposes to compile with respect to second and third adjacent channel operations.

**B. Grant Of NAB's Extension Request Would Prejudice Other Parties To This Proceeding**

Even if it were to be assumed, arguendo, that NAB had established good cause for the grant of its request for a two-month extension for the filing of its contemplated data, nonetheless, the request should be summarily denied, since grant of the request will significantly prejudice other parties to this proceeding. In this connection, NAB is essentially seeking to place what may amount to a significant amount of new data into the record in this proceeding for the first time on the deadline seeking filing of Reply Comments. However, under Section 1.415 of the Commission's Rules, the pleading cycle in this proceeding is closed as of the deadline for the filing of Reply Comments. Hence, if NAB is permitted to submit new data for the record in this proceeding for the

first time on the last day for the filing of Reply Comments, all other parties to this proceeding will be severely prejudiced, since no such parties would have a meaningful opportunity to respond on the record to the NAB submission. Fundamental fairness dictates that no new data of the sort contemplated by NAB be submitted on the record in this proceeding any later than the deadline established for the filing of Comments, so as to enable other parties to have a meaningful opportunity to reply.

In this regard, it should be noted that RM-7651 has been pending before the Commission since February 1, 1991 -- for over five and one-half years. As noted above, NAB opposed that Rulemaking petition and was thus obviously aware of the issues in the proceeding. Presumably, NAB was aware of the adoption of the Commission's NPRM in this proceeding on May 23, 1996, and was certainly aware of the release of the text of the NPRM on June 14, 1996. The only appropriate vehicle for NAB to have used if it felt that it needed a two-month extension of time to compile additional technical data was to file a Motion For Extension Of Time seeking additional time within which all parties could file comments in this proceeding. While a two-month delay in the filing of such initial Comments might have been prejudicial, nonetheless, the grant of an extension for the filing of Comments would have at least avoided the prejudice resulting from unavailability of an opportunity to file a reply to NAB's contemplated submission. Since NAB chose not to file a timely request for extension of the Comment deadline in this proceeding, it should be precluded from the opportunity of filing new data for the first time on the Reply Comment deadline date, so as to avoid prejudice to other parties to this proceeding.

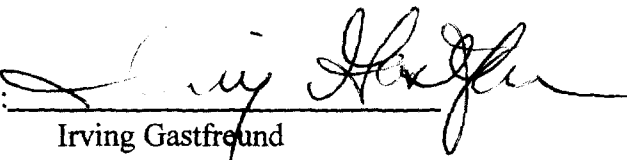


### **III. Conclusion**

In light of all the foregoing considerations, NAB's July 22, 1996 Motion For Extension Of Time and Reply Comments Deadline should be expeditiously denied, so as to provide certainty to all parties to this proceeding as to the deadline for submission of Reply Comments. However, in the unlikely event that the Commission declined to deny NAB's Motion, Compass respectfully requests that the Commission grant to Compass and to all other parties in this proceeding, other than NAB, a further period of time for the submission of supplementary reply comments, within which to respond to the NAB submission, and it is further requested that the deadline to be established for the submission of any such supplementary replies provide parties in this proceeding with an amount of time equal to whatever extension is granted by the Commission to NAB in response to its Motion.

Respectfully submitted,

COMPASS RADIO OF SAN DIEGO, INC.

By:   
Irving Gastfreund

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Its Counsel

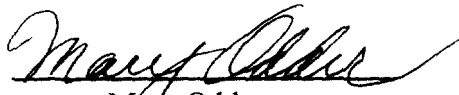
July 24, 1996

**CERTIFICATE OF SERVICE**

I, Mary Odder, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that, on this 24th day of July, 1996, I have caused a copy of the foregoing Opposition To Motion For Extension Of Time in Reply Comment Deadline, to be hand-delivered to the following:

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Executive Vice President and General Counsel  
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